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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

CELSIUS NETWORK LLC, *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 22-10964 (MG)
)
) (Jointly Administered)
)

**LIMITED OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS TO THE SERIES B PREFERRED HOLDERS' MOTION FOR ENTRY
OF AN ORDER ESTABLISHING ESTIMATION PROCEDURE FOR THE
INTERCOMPANY CLAIM BETWEEN CELSIUS NETWORK LLC AND
CELSIUS NETWORK LIMITED IN FURTHERANCE OF FORMULATING
THE DEBTORS' PLAN OF REORGANIZATION**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Celsius Network LLC (2148); Celsius KeyFi LLC (4414); Celsius Lending LLC (8417); Celsius Mining LLC (1387); Celsius Network Inc. (1219); Celsius Network Limited (8554); Celsius Networks Lending LLC (3390); Celsius US Holding LLC (7956); GK8 USA LLC (9450); GK8 Ltd. (1209); and GK8 UK Limited (0893). The location of Debtor Celsius Network LLC's principal place of business and the Debtors' service address in these chapter 11 cases is 50 Harrison Street, Suite 209F, Hoboken, New Jersey 07030.

The Official Committee of Unsecured Creditors (the “**Committee**”) of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), by and through its undersigned counsel, hereby submits this limited objection (the “**Limited Objection**”) to the *Series B Preferred Holders’ Motion for Entry of an Order Establishing Estimation Procedure for the Intercompany Claim Between Celsius Network LLC and Celsius Network Limited in Furtherance of Formulating the Debtors’ Plan of Reorganization* [Dkt. No. 2367] (the “**Series B Motion**”).²

LIMITED OBJECTION

1. There is no dispute among the Debtors, the Committee and the Series B Preferred Holders regarding whether estimation of the intercompany note claim of LLC against CNL is appropriate. The only dispute is with regard to the schedule on which estimation should occur and whether the Court should take up other, related issues between LLC and CNL.

2. The Series B Preferred Holders believe that litigation regarding estimation of the intercompany note claim should occur in a vacuum, with all other litigation regarding LLC and CNL postponed until that one issue is resolved. The Debtors and the Committee, however, believe that litigation regarding estimation should be coordinated with certain related disputes—specifically, substantive consolidation of LLC and CNL, which the Debtors have sought through the *Joint Chapter 11 Plan of Reorganization of Celsius Network LLC and Its Debtor Affiliates* [Dkt. No. 2358] (the “**Plan**”), and the constructive fraudulent transfer claim by LLC against CNL, which the Committee intends to assert in a forthcoming adversary complaint (the “**Committee Complaint**”). To be clear, the Committee intends to assert additional claims against CNL, which

² Capitalized terms used but not defined herein have the meanings ascribed to them in the *Motion of the Official Committee of Unsecured Creditors for Entry of an Order (i) Establishing Procedures to Estimate the Intercompany Claim That Celsius Network, LLC Has against Celsius Network Limited and (ii) Granting Related Relief* [Dkt. No. 2369] (the “**Committee Motion**”).

may include, without limitation, actual fraudulent transfer, conversion, and veil-piercing.³ However, the three issues that the Committee (and the Debtors) propose to try together on the schedule before the Court—estimation, constructive fraudulent transfer and substantive consolidation—are all premised on overlapping facts and arguments, such that efficiency and judicial economy support adopting a schedule in which they are all litigated simultaneously, rather than serially.

3. For example, a witness in a deposition regarding estimation might testify that the full record of transactions between LLC and CNL is unavailable because those transactions were inconsistently documented and the corporate separateness of those two entities was not well observed. That testimony would directly relate to substantive consolidation. Similarly, the witness might testify that LLC assumed more liabilities from CNL than it received assets, or otherwise lacked assets sufficient to support the assumed liabilities. That testimony would directly relate to fraudulent transfer. It would make no sense for the party taking this deposition to have to re-notice it so that substantive consolidation and fraudulent transfer could be explored at a later date. Moreover, it would be a waste of estate and judicial resources for the parties to file, and the Court to consider, multiple briefs advancing many of the same allegations and arguments. Rather, these overlapping issues should be investigated, briefed and argued together.

4. Additionally, sequential litigations are impractical, if not impossible. The Debtors have filed the Plan, which contemplates substantive consolidation of LLC and CNL and preservation of the contractual intercompany and all other intercompany claims between LLC and CNL. *See* Plan §§ III.B.11; IV.A.1. These issues therefore must be decided before or as part of

³ The Committee reserves all rights regarding such claims, including, without limitation, the substance of the claims and the schedule on which they will be tried.

the confirmation process. The Debtors and their creditors should not be in the position of having to sequentially litigate issues in a manner that delays confirmation.

5. Despite these concerns, at a meet-and-confer held on April 12, 2023, the Series B Preferred Holders refused to agree to a coordinated litigation schedule regarding these issues. The Series B Preferred Holders asserted, among other things, that the Debtors and the Committee had not provided sufficient notice of their intent to seek a coordinated schedule. That claim is meritless. In the Committee Motion, the Committee stated that “[c]onsistent with the Court’s statements in the Customer Claims Decision, the Committee intends to bring other claims and causes of action (for example, substantive consolidation and fraudulent conveyance) regarding account holders’ rights and entitlements.” Committee Motion at 6, n.6. Moreover, the Committee stated that it “intends to coordinate these actions to the extent possible on the schedule approved by the Court so that all relevant evidence and arguments can be presented to the Court efficiently.” *Id.* The Committee further stated that it “intends to meet and confer with the Debtors and the Series B Preferred Holders regarding incorporating these other claims and causes of action into this schedule,” including, specifically, “substantive consolidation and fraudulent conveyance.” *Id.* at 9-10, n.7. After filing the Committee Motion, the Committee conferred with the Debtors, who agreed that litigating these issues together not only makes sense, but is essential in light of the estates’ strained financial position.

6. Additionally, both substantive consolidation and fraudulent transfer have been prominently raised in these cases going back months. For example, the Debtors raised the prospect of both substantive consolidation and fraudulent transfer more than two months ago, at an oral argument which the Series B Preferred Holders attended. *See* Feb. 6, 2023 Hr’g Tr. at 64:15-21 (stating that “substantive consolidation” and “fraudulent conveyance” may be raised “at the

appropriate time”). Moreover, the proposed Plan contemplates substantive consolidation of LLC and CNL. *See* Plan § IV.A.1. And the Examiner concluded in her final report that, based on the evidence discussed therein (including a solvency analysis), LLC “has been insolvent since inception.” *Final Report of Shoba Pillay, Examiner* [Dkt. No. 1956] at 370.

7. Importantly, the Debtors—who will bear the brunt of nearly all the discovery on these issues—agree with the Committee’s position and support aligning these disputes.

8. Accordingly, the Committee proposes the following schedule:⁴

Task	Deadline
Deadline for (i) Debtors and/or Committee to file motion for substantive consolidation and (ii) Committee Complaint asserting constructive fraudulent conveyance	Mon, May 1
Deadline for parties to serve written discovery regarding (i) substantive consolidation and (ii) constructive fraudulent conveyance	Thur, May 4 (limitation of 12 interrogatories per party)
Deadline for responses to requests for production	Mon, May 8
Deadline for responses to interrogatories and substantial completion of document production	Wed, May 31
Deadline to complete fact depositions	Tues, June 13
Deadline for expert reports	Wed, June 14
Deadline for expert rebuttal reports	Thur, June 22
Deadline to complete expert deps	Thur, June 29
Deadline for parties to file opening briefs	Fri, June 30
Deadline for parties to file response briefs	Mon, July 10
Deadline to exchange witness and exhibit lists	Wed, July 12
Deadline for objections to witness and exhibit lists	Fri, July 14
Trial on (i) estimation, (ii) fraudulent conveyance and (iii) substantive consolidation	Mon, July 17

⁴ The Debtors and the Committee continue to discuss certain interim dates in this schedule and reserve the right to propose a slightly modified schedule at the hearing on April 18. Additionally, the Committee will continue to try to reach agreement with the Series B Preferred Holders before the hearing.

Reservation of Rights

9. The Committee reserves the right to seek to amend or modify this schedule. Additionally, the Committee reserves the right to bring any and all claims and causes of action in addition to those set forth herein.

Conclusion

10. WHEREFORE, for the reasons set forth herein, the Committee respectfully requests that the Court sustain this Limited Objection and approve the schedule set forth herein.

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Dated: April 15, 2023
New York, New York

Respectfully submitted,

/s/ Samuel P. Hershey

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